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Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/071,052    06/04/93    KREAMER

J    467312465

026386    HM12/0514  
DAVIS, BROWN, KOEHN, SHORS & ROBERTS, P.  
THE FINANCIAL CENTER  
666 WALNUT STREET  
SUITE 2500  
DES MOINES IA 50309-3993

EXAMINER

CRIARES, T

ART UNIT

PAPER NUMBER

1617

DATE MAILED:

05/14/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

# Office Action Summary

Application No.  
08/071,052

Applicant(s)  
Kreamer

Examiner  
Theodore J. Criares

Art Unit  
1617



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Mar 2, 2001
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 11-29 is/are pending in the application.
- 4a) Of the above, claim(s) 11-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other: \_\_\_\_\_

Art Unit: 1617

## **CLAIMS 11-29 ARE PRESENTED FOR EXAMINATION**

Applicant's arguments filed March 2, 2001 have been fully considered but they are not persuasive.

The amendment to the specification has **not** been entered. Applicant alleges that the present application is a continuation of SN 07/746,615, filed August 19, 1991 and **abandoned December 15, 1992,** <sup>(EXHIBIT A)</sup> which is a continuation of SN 07/317,422, filed March 3, 1989, and **abandoned August 22, 1990,** <sup>(EXHIBIT B)</sup> The applications are not therefore continuation applications but are Supplemental continuation applications.

The earliest priority date available to the applicant is the filing date of the current application, June 4, 1993.

Therefore, Hannekens reference with a filing date of October 1, 1990 has priority over the filing date of the present application, since there is a hiatus from December 15, 1992 and June 4, 1993.

Claims 27-29 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Hannekens (5,871,766).

Hennekens in the Abstract and at column 3, lines 66-67 teaches the compost of beta-carotene and aspirin. At column 6, lines 57-67 it is taught that a combination of beta-carotene (which is disclosed at column 2, lines 20-21 to be a provitamin of Vitamin A) and aspirin in the

Art Unit: 1617

amounts of 50 mg and 32.5 mg, respectively was used in the treatment of cardiovascular mortality.

Applicant's claims are drawn to a composition. It is well recognized in Patent Law that a new use of known composition does not render the composition patentable.

Therefore, the composition claims <sup>27-29</sup>~~##~~ are obviated under 35 U.S.C. 103 since an intended use limitation does not render the composition unobvious. See *In re Skoner*, 186 USPQ 80 (CCPA 1975); *In re Kalm* 154 USPQ 10 (CCPA 1967); *In re Halley* 132 USPQ 16 (CCPA 1961).

It is suggested that applicant present data to establish a synergistic combination. A review of Applicant's specification fails to provide such data commensurate with the scope of claims 27-29.

None of the elected claims 27-29 claims are allowed. Claims 11-26 remain withdrawn from prosecution.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

Art Unit: 1617

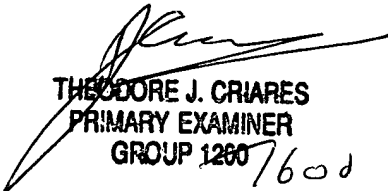
CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Criares whose telephone number is (703) 308-4607. The examiner can normally be reached on Monday to Thursday from 9:00 A.M. to 5:00 P.M.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7924.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

May 7, 2001

  
THEODORE J. CRIARES  
PRIMARY EXAMINER  
GROUP 1200 7600

**PALM INTRANET**

Day : Tuesday  
Date: 5/8/2001  
Time: 09:59:08

**Application Number Information**

Application Number : 07/746615 Order  
This File Assignments

Examiner Number : 69537/JORDAN, KIMBERLY R

Filing Date : 08/19/1991

Group Art Unit : 1205

Application Received : 00/00/0000

Class/Subclass : 514/166.000

Patent Number :

Lost Case : NO

Issue Date : 00/00/0000

Interference Number :

Date of Abandonment : 12/15/1992

Unmatched Petition : NO

Attorney Docket Number : 467312/465

L&R Code : 01

Status : 161 / ABANDONED FILE - FAILURE TO RESPOND TO  
AN ACTION

Status Date : 04/16/1993

Location : 9200/FILE REPOSITORY (FRANCONIA)

Location Date : 06/09/1999

Charge to Location : /No Charge to Location Definition

Charge to Name : No Charge to Name

Title of Invention :

**ASPIRIN AND VITAMIN AND/OR TRACE ELEMENT COMPOSITIONS FOR THE  
PREVENTION AND TREATMENT OF VASCULAR DISEASE**

Appln  
Info

Contents

Details

Atty/Agent Info

Continuity Data

Foreign Data

Inventors

Search Another: Application#

Search

or Patent#

Search

(To Go BACK Use BACK Button on Your BROWSER Tool Bar)

Back to || [PALM](#) || [ASSIGNMENT](#) || [OASIS](#) || Home Page



Day : Tuesday  
Date: 5/ 8/2001  
Time: 09:59:41

## Application Number Information

Application Number : **07/317422** Order  
This File Assignments

Examiner Number : **66553/HENLEY III, RAYMOND J**

Filing Date : **03/01/1989**

Group Art Unit : **1205**

Application Received : **00/00/0000**

Class/Subclass : **514/159.000**

Patent Number :

Lost Case : **NO**

Issue Date : **00/00/0000**

Interference Number :

Date of Abandonment : **08/22/1990**

Unmatched Petition : **NO**

Attorney Docket Number :

L&R Code : **01**

Status : **161 / ABANDONED FILE - FAILURE TO RESPOND TO AN ACTION**

Status Date : **01/10/1991**

Location : **9200/FILE REPOSITORY (FRANCONIA)**

Location Date : **06/09/1999**

Charge to Location : **/No Charge to Location Definition**

Charge to Name : **No Charge to Name**

Title of Invention :

**ASPIRIN AND VITAMIN COMPOSITION FOR THE PREVENTION AND TREATMENT OF VASCULAR DISEASE**

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Back to || [PALM](#) || [ASSIGNMENT](#) || [OASIS](#) || Home Page

Exhibit 'B'